

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

INTRODUCTION

18 The court issues this order to document its release order, to set this matter (with the parties'
19 agreement) on the district court's calendar on Friday, February 22, 2013, at 11 a.m. for a hearing
20 on the government's appeal of the release decision, and to stay its release order to allow the
21 district court to hear the government's appeal.

ANALYSIS

23 I. RELEASE ORDER AND STAY

24 The undersigned held four detention hearings in this case on January 25, January 28, January
25 30, 2013, and ordered Mr. Hasan detained (although it allowed Mr. Hasan to be released for the
26 day on Thursday, January 31, 2013, so that he could attend an interview). The court ordered Mr.
27 Hasan released on February 21, 2013 on the same conditions of supervision and added the
28 additional conditions reflected on the attached bond form: home detention with electronic

ORDER (CR 09-1027 SI)

1 monitoring and the ability to leave his home for appointments only if approved by his probation
2 officer. The court also added Mr. Hasan's significant other, Lillian Posey, as a surety, and added
3 her as a custodian. As the court does with all sureties and custodians, it advised Ms. Posey (who
4 works at BCBG Max Azaria) of the charges, the penalties, and all the terms of supervision, and it
5 discussed with her the serious promises of a custodian (which here were articulated as working
6 with Ms. Romero, helping Mr. Hasan get to and from his authorized appointments, and informing
7 probation of any violations under penalty of being held in civil or criminal contempt) and
8 obligations of a surety (judgment against her personally in the amount of \$25,000). The court's
9 view is that these additional conditions provide the assurances and satisfy by clear and convincing
10 evidence that Mr. Hasan is not likely to flee or pose a danger. *See* 18 U.S.C. § 3439(a)(1).

11 The additional conditions are reflected on the attached bond form.

12 The government notified the parties that it intends to appeal the decision and asked for a stay.
13 The parties agreed that they would set the matter on the district court's calendar for February 22,
14 2013 at 11 a.m. To facilitate the U.S. Marshal's transportation of Mr. Hasan, the court sets the
15 hearing because if it does not, Mr. Hasan will not be here if the defense determines that it wants to
16 go forward on February 22, 2013. The court also stays its release order until after the hearing.
17 The one issue is that Ms. Romero was not available on Friday. It may be that she can send
18 someone else familiar with the case (such as Robert Tenney) and that will be sufficient. If not, the
19 parties should work with the district court to set a different date, and the court's stay will remain
20 in effect until then.

21 II. OTHER CONSIDERATIONS

22 The court previously issued an order documenting some of the considerations about its
23 release decision. *See* 1/31/13 Order, ECF No. 65. The following are some of those considerations
24 and more.

25 *First*, as the government pointed out in its filing at ECF No. 63, and as the pending Form 12
26 illustrates, Mr. Hasan has struggled throughout his supervision (pre-trial and post-conviction), and
27 the government and the probation officer justifiably have concerns about Mr. Hasan. The
28 allegations here involve conduct that Mr. Hasan had complete control over: reporting to his

1 probation officer, submitting monthly reports, attending therapy and testing, and attending his
2 probation appointments. In fact, Mr. Hasan stopped showing up at all.

3 *Second*, at the government's request, the court efiled at ECF No. 69 the government's list of
4 Mr. Hasan's failures to comply with the terms of his supervision. As the court said at the
5 hearings, all of the government's arguments are fair, but they are not a complete capture of Mr.
6 Hasan's struggles (and some successes) on supervision.

7 *Third*, the court's view is that when Mr. Hasan enrolls in his training program, things will
8 change. Employment, job skills, and finishing a project are all things that Mr. Hasan has not
9 achieved. The court's view is that in the interim, Mr. Hasan needs to work on the list attached to
10 the court's previous order, have a complete psych evaluation (as Ms. Halbert contemplates),
11 working on the funding for his training, and establish a better working relationship with his
12 probation officer. After a month in custody, the court's view – at least from the standpoint of a
13 bail decision – are that the additional conditions will enable him to comply with his supervision
14 conditions and work on his employment.

15 **IT IS SO ORDERED.**

16 Dated: February 21, 2013



LAUREL BEELER
United States Magistrate Judge

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UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA		ORDER SETTING CONDITIONS OF RELEASE AND APPEARANCE BOND		DATE	CASE NUMBER	
NAME OF DEFENDANT <i>Omar Hasan</i>				<i>2/21/2013</i>	<i>CR09-1027 SJ</i>	
NAME OF SURETY & CUSTODIAN <i>Lillian Posey</i>		RELATIONSHIP TO DEFENDANT <i>Girlfriend</i>		ADDRESS OF DEFENDANT <i>1535 Revere St.</i>	TELEPHONE NUMBER <i>415 822 2278</i>	
NAME OF CUSTODIAN <i>Lillian Posey</i>		RELATIONSHIP TO DEFENDANT <i>Girlfriend</i>		ADDRESS OF SURETY <i>1935 Sutter Street</i>	TELEPHONE NUMBER <i>(415) 724-3358</i>	
AMOUNT OF BOND <i>\$25,000</i>	<input checked="" type="checkbox"/> UNSECURED <i>P/R</i>	<input type="checkbox"/> SECURED BY <i>\$</i>	<input type="checkbox"/> DEPOSIT RECEIVED RECEIVED FROM: <i></i>	OTHER SECURITY POSTED TO BE POSTED BY: <i></i>	TIME/DATE OF NEXT APPEARANCE <i>3/8/2013 at 11:00 a.m. SJ</i>	COURTROOM/JUDGE <i>51</i>

CONDITIONS OF RELEASE AND APPEARANCE

Defendant is subject to each condition checked.

- Defendant shall appear at all proceedings as ordered by the Court and shall surrender for service of any sentence imposed.
- Defendant shall not commit any federal, state, or local crime.
- Defendant shall not harass, threaten, intimidate, injure, tamper with, or retaliate against any witness, victim, informant, juror, or officer of the Court, or obstruct any criminal investigation. See 18 U.S.C. 1503, 1510, 1512, and 1513, on reverse side.
- Defendant shall not travel outside the Northern District of California, that is, these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, and Sonoma. See map on reverse side.
- Defendant shall report in person immediately upon release and thereafter as directed to Pretrial Services in _____
See addresses and telephone numbers on reverse side.
- Defendant shall surrender all passports and visas to Pretrial Services by _____ and shall not apply for any passports or other travel documents.
- Defendant shall not possess any firearm, destructive device, or other dangerous weapon.
- Defendant shall remain in the custody of custodian *Lillian Posey* at *1535 Revere St SF CA*, who agrees to supervise him/her and to report any violation of a release condition to Pretrial Services. A custodian who fails to do so may be prosecuted for contempt.
- Defendant shall participate in (drug) (alcohol) (mental health) counseling, and submit to (drug) (alcohol) testing, as directed by Pretrial Services.
- Defendant shall not use alcohol to excess and shall not use or possess any narcotic or other controlled substance without a legal prescription.
- The Defendant shall maintain current verifiable employment, or if unemployed, the defendant shall seek employment or commence an educational program as directed by Pretrial Services.
- Defendant shall submit to a warrantless search of his/her person, place of residence and vehicle at the direction of Pretrial Services.
- Defendant shall have no contact with any co-defendant out of the presence of counsel.
- Defendant shall not change residence without prior approval of Pretrial Services.
- ~~Defendant shall comply with the following curfew: _____ to _____.~~
- ~~Defendant shall be subject to electronic or voice track monitoring. Defendant may leave home for the purpose of _____.~~
- ~~Defendant must reside in Halfway House _____ participate in Residential Treatment _____ by the probation officer.~~
- The following conditions also apply:

Defendant placed on Home Detention.

Defendant shall contribute to the cost of services provided by Pretrial Services as directed by Pretrial Services.

CONSEQUENCES OF DEFENDANT'S FAILURE TO OBEY CONDITIONS OF RELEASE

Payment of the full amount of this bond shall be due forthwith, and all cash or property posted to secure it shall be forfeited. Judgment may be entered and executed against defendant and all sureties jointly and severally.

An arrest warrant for defendant shall issue immediately, and defendant may be detained without bail for the rest of the proceedings.

Defendant shall be subject to consecutive sentences and fines for failure to appear and/or for committing an offense while on release. See 18 U.S.C. 3146 and 3147, on reverse side.

We, the undersigned, have read and understand the terms of this bond and acknowledge that we are bound by it until duly exonerated.

SIGNATURE OF DEFENDANT
*X*SIGNATURE OF CUSTODIAN
Lillian Posey

THIS ORDER AUTHORIZES THE MARSHAL TO RELEASE DEFENDANT FROM CUSTODY.

SIGNATURE(S) OF SURETY(IES)
*X*SIGNATURE OF MAGISTRATE/JUDGE
Lillian Posey

2/21/13

2/21/13

DATE